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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA,
SAN FRANCISCO DIVISION

SONOS, INC.,
Plaintiff and Counter-defendant,
v.
GOOGLE LLC,
Defendant and Counter-claimant.

Case No. 3:20-cv-06754-WHA
Related to Case No. 3:21-cv-07559-WHA
**SONOS, INC.'S ADMINISTRATIVE
MOTION TO FILE UNDER SEAL RE
NOTICE OF LODGING
PRESENTATION SLIDES RE THE
MARCH 30, 2023 HEARING**

1 **I. INTRODUCTION**

2 Pursuant to Civil Local Rules 7-11 and 79-5, Sonos, Inc. (“Sonos”) hereby respectfully
 3 submits this Administrative Motion to Seal (“Administrative Motion”) in connection with
 4 Sonos’s Notice of Lodging Presentation Slides Re the March 30, 2023 Hearing (“Sonos’s Notice
 5 of Lodging”). Specifically, Sonos seeks to file under seal the information and/or document(s)
 6 listed below:

DOCUMENT	PORTIONS TO BE SEALED	DESIGNATING PARTY ¹
Attachment A to Sonos’s Notice of Lodging	Portions outlined in red boxes on pages 2-10	Sonos and Google
Attachment E to Sonos’s Notice of Lodging	Portions outlined in red boxes on pages 29, 30-32	Sonos

12 **II. LEGAL STANDARD**

13 Civil Local Rule 79-5 requires that a party seeking sealing “establish[] that the document,
 14 or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection
 15 under the law” (*i.e.*, is “sealable”). *See* Civil L.R. 79-5(b). The sealing request must also “be
 16 narrowly tailored to seek sealing only of sealable material.” *Id.*

17 “Historically, courts have recognized a ‘general right to inspect and copy public records
 18 and documents, including judicial records and documents.’” *Kamakana v. City & Cty. of
 19 Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435
 20 U.S. 589, 597 & n.7 (1978)). Accordingly, when considering a sealing request, “a ‘strong
 21 presumption in favor of access’ is the starting point.” *Id.* (quoting *Foltz v. State Farm Mutual
 22 Auto. Insurance Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)).

23 The Ninth Circuit has recognized that two different standards may apply to a request to
 24 seal a document – namely the “compelling reasons” standard or the “good cause” standard.
 25 *Blessing v. Plex Sys., Inc.*, No. 21-CV-05951-PJH, 2021 WL 6064006, at *12 (N.D. Cal. Dec. 22,

27 ¹ With respect to the information and/or documents identified in the table, which contain
 28 confidential material designated by both parties, Sonos is concurrently filing an administrative
 motion to consider sealing the same information re Google.

1 2021) (citing *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096-97 (9th Cir.
 2 2016)). The compelling reasons standard applies to any sealing request made in connection with
 3 a motion that is “more than tangentially related to the merits of a case.” *Id.* A party seeking to
 4 seal materials submitted with a motion that is “more than tangentially related to the merits of the
 5 case” must demonstrate that there are “compelling reasons” to keep the documents under seal.
 6 *WhatsApp Inc. v. NSO Grp. Techs. Ltd.*, 491 F. Supp. 3d 584, 596 (N.D. Cal. 2020) (citing *Ctr.*
 7 *for Auto Safety*, 809 F. 3d at 1101-1102). What constitutes a compelling reason is left to the
 8 “sound discretion of the trial court.” *Ctr. for Auto Safety*, 809 F.3d at 1097 (quoting *Nixon*, 435
 9 U.S. at 599).

10 Under the compelling reasons standard, “a court may seal a record only if it finds a
 11 ‘compelling reason’ to support such treatment.” *Blessing*, 2021 WL 6064006, at *12. In applying
 12 the “compelling reasons” standard, the Ninth Circuit has found appropriate the sealing of
 13 documents where court records could be used “as sources of business information that might
 14 harm a litigant’s competitive standing.” *See Ctr. for Auto Safety*, 809 F.3d at 1097. “Confidential
 15 business information in the form of ‘license agreements, financial terms, details of confidential
 16 licensing negotiations, and business strategies’ satisfies the ‘compelling reasons’ standard.”
 17 *Hetland v. LendingTree, LLC*, No. 19-CV-02288-JSC, 2021 WL 2313386, at *1 (N.D. Cal. May
 18 3, 2021) (quoting *Exeltis USA Inc. v. First Databank, Inc.*, Case No. 17-cv-04810-HSG, 2020
 19 WL 2838812, at *1 (N.D. Cal. June 1, 2020)). Courts have found the compelling reasons
 20 standard satisfied where parties sought to seal “terms” that “if public, could be used by [the
 21 parties’] competitors to give them an unfair advantage in the development and negotiations of
 22 rival products.” *Unlockd Media Inc. v. Google LLC*, 21-cv-07250-HSG, at *2 (N.D. Cal. Sep. 30,
 23 2022).

24 **III. THE COURT SHOULD SEAL SONOS’S CONFIDENTIAL MATERIAL**

25 The portions of Attachment E outlined in red boxes contain references to Sonos’s
 26 confidential business information and trade secrets, including confidential technical details
 27 regarding the operation of Sonos products. Thus, public disclosure of such information may lead
 28 to competitive harm as Sonos’s competitors could use these details regarding the operation and

1 functionality of these products to gain a competitive advantage in the marketplace with respect to
 2 their competing products. Additionally, the portions of Attachment A outlined in red boxes
 3 include terms to confidential agreements that are not public. Specifically, that Attachment shows
 4 the terms on which Sonos works with content service providers to integrate their content into
 5 Sonos's system, a regular part of Sonos's commercial work. Disclosure of this information
 6 would harm Sonos's competitive standing by giving Sonos's competitors highly sensitive
 7 information about Sonos's business dealings with other entities. *See, e.g.*, Dkt. 518 at 15
 8 (granting Google's request to "seal information related to third-party license agreements, public
 9 disclosure of which may cause Google harm"); Case No. 3:21-cv-7559-WHA, Dkt. 228 at 3-4
 10 (granting motions "to seal references to confidential business negotiations and agreements, public
 11 disclosure of which may cause both parties harm"). Sealing this information would thus "prevent
 12 competitors from gaining insight into [Sonos's] business model and strategy." *In re Qualcomm*
 13 *Litig.*, No. 3:17-cv-0108-GPC-MDD, at *4 (S.D. Cal. Nov. 8, 2017). A less restrictive alternative
 14 than sealing the portions of Sonos's Motion and the exhibits indicated in the table above, would
 15 not be sufficient because the information sought to be sealed is Sonos's confidential business
 16 information and trade secrets and is integral to Sonos's legal arguments. *See* Declaration of Clem
 17 Roberts in Support of Administrative Motion filed concurrently herewith, ¶ 4.

18 **IV. CONCLUSION**

19 In compliance with Civil Local Rule 79-5(d) and (e), unredacted versions of the above-
 20 listed documents accompany this Administrative Motion and redacted versions are filed publicly.
 21 A proposed order is being filed concurrently herewith. For the foregoing reasons, Sonos
 22 respectfully requests that the Court grant Sonos's Administrative Motion.

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1 Dated: April 21, 2023

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and
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3 By: /s/ Clement S. Roberts
4 Clement S. Roberts

5 *Attorneys for Sonos, Inc.*

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